STATE OF MICHIGAN

DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

The Recovery Project
Petitioner **File No. 21-1763**

v

Auto Club Group Insurance Company
Respondent

Issued and entered
this 17th day of February 2022
by Sarah Wohlford
Special Deputy Director

ORDER

I. PROCEDURAL BACKGROUND

On November 23 and 24, 2021, The Recovery Project (Petitioner) filed with the Department of Insurance and Financial Services (Department) a request for an appeal pursuant to Section 3157a of the Insurance Code of 1956 (Code), 1956 PA 218, MCL 500.3157a. The request for an appeal concerns the determination of Auto Club Group Insurance Company (Respondent) that the Petitioner overutilized or otherwise rendered or ordered inappropriate treatment under Chapter 31 of the Code, MCL 500.3101 to MCL 500.3179.

The Petitioner's appeal is based on the denial of a bill pursuant to R 500.64(3), which allows a provider to appeal to the Department from the denial of a provider's bill. The Respondent issued the Petitioner bill denials on August 23 and 26, 2021 and November 8, 2021. The Petitioner now seeks reimbursement in the full amount it billed for the dates of service at issue.

The Department accepted the request for an appeal on December 9, 2021. Pursuant to R 500.65, the Department notified the Respondent and the injured person of the Petitioner's request for an appeal on December 10, 2021 and provided the Respondent with a copy of the Petitioner's submitted documents. The Respondent filed a reply to the Petitioner's appeal on December 21, 2021.

The Department assigned an independent review organization (IRO) to analyze issues requiring medical knowledge or expertise relevant to this appeal. The IRO submitted its report and recommendation to the Department on January 10, 2021. The Director issued a written notice of extension to both parties on January 14, 2022.

II. FACTUAL BACKGROUND

This appeal concerns the denial of payment for physical therapy treatments rendered on the following dates of service: July 1, 2, 6, 8, 13, 15, 16, 20, 22, 23, 27 and 29, 2021; and August 6, 10, and 12, 2021. The Current Procedural Terminology (CPT) codes at issue include 97112 for neuromuscular re-education and 97110 for therapeutic exercise. In its *Explanation of Benefits* letter, the Respondent referenced Official Disability Guidelines (ODG) for head conditions relating to moderate to severe traumatic brain injury (TBI). The Respondent stated that the injured person exceeded treatment guidelines having attended "275 therapy sessions as of 8/10/2021."

With its appeal request, the Petitioner provided supporting documentation which referenced the American Physical Therapy Association (APTA) clinical practice guidelines and medical literature in relation to the injured person's traumatic brain injury (TBI). The Petitioner argued that ODG guidelines for auto injury do not apply to the injured person's "state of recovery" and that the injured person "has a permanent disability resulting in physical and cognitive deficits, which requires 24-hour attendant care." The Petitioner further explained that the injured person "does not have the capacity to perform an active self-directed home physical therapy (PT) program, which should not be a consideration of denial in this case."

The Petitioner's request for an appeal stated:

> The [ODG] guidelines do not consider the need of skilled service to optimize function, maintain the [injured person's] condition or to prevent or slow further deterioration…APTA guidelines…clearly support skilled services…Due to the severity of [the injured person's] deficits, he is at high-risk for joint contractures, scoliosis, obesity, osteoporosis frequent falls, muscular-skeletal overuse injuries, which will require more rehabilitative services than what the ODG guidelines recommend. His overall quality of life could be affected due to the risk of progression of these medical complications.

In its reply, the Respondent reaffirmed its position and referenced American College of Occupational and Environmental Medicine (ACOEM) guidelines for TBI disorder in support. The Responded noted that "there are no quality studies assessing neuromuscular re-education for treatment of TBI" and that an 8-week trial session of physical therapy is appropriate for TBI. The Respondent also referenced ODG guidelines for head, ankle, and foot conditions and pain. The Respondent noted that the treatment exceeds the guidelines and that, based on the documentation, "physical therapy services have been provided since 10/29/2012."

III. ANALYSIS

Director's Review

Under MCL 500.3157a(5), a provider may appeal an insurer's determination that the provider overutilized or otherwise rendered inappropriate treatment, products, services, or accommodations, or that

the cost of the treatment, products, services, or accommodations was inappropriate under Chapter 31 of the Code. This appeal involves a dispute regarding inappropriate treatment and overutilization.

The Director assigned an IRO to review the case file. In its report, the IRO reviewer concluded that, based on the submitted documentation, medical necessity was not supported on the dates of service at issue and the treatment was overutilized in frequency or duration based on medically accepted standards.

The IRO reviewer is a physician, board-certified in physical medicine and rehabilitation with additional certification in electrodiagnostic medicine and acupuncture. In its report, the IRO reviewer referenced R 500.61(i), which defines "medically accepted standards" as the most appropriate practice guidelines for the treatment provided. These may include generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government or national or professional medical societies, board, and associations. The IRO reviewer relied on ODG evidence-based practice guidelines and medical literature for its recommendation.

Based on the documentation, the IRO reviewer explained that the injured person was seen for "over 600 physical therapy sessions." The IRO reviewer stated that at the telehealth visit on July 2, 2021, the injured person's mental status and cognitive function did not appear impaired and that he was using a "full-length mirror with cue cards to correct standing posture during activities of daily living." The IRO reviewer noted that medical documentation from an August 12, 2021 telehealth visit indicated that the injured person "required standby assistance for gait with four-wheeled walker," was unable to independently care for himself, and "required verbal cues/minimum assistance for transfers."

The IRO reviewer opined that during the July 2, 2021 to August 12, 2021 treatment time frame, "there was no documentation of significant improvement in strength, range of motion, pain levels or function" and stated that the physical therapy for the dates of service at issue "were overutilized and not medically necessary."

More specifically, the IRO reviewer stated:

> The Official Disability Guidelines recommend 20-40 physical therapy visits over 4 weeks in the acute phase and 6-12 physical therapy visits over 12 weeks in the subacute phase, with a maximum of 52 visits for hemiplegia. The [injured person] has had over 600 physical therapy visits, which exceeds the recommended maximum 52 visits. Therefore, the visits in question would be considered overutilized and not medically necessary.

The IRO reviewer recommended that the Director uphold the Respondent's determination that the physical therapy treatments provided to the injured person on July 1, 2, 6, 8, 13, 15, 16, 20, 22, 23, 27 and 29, 2021; and August 6, 10, and 12, 2021 were not medically necessary in accordance with medically accepted standards, as defined by R 500.61(i).

IV. ORDER

The Director upholds the Respondent's determinations dated August 23 and 26, 2021 and November 8, 2021.

This order applies only to the treatment and dates of service discussed herein and may not be relied upon by either party to determine the injured person's eligibility for future treatment or as a basis for action on other treatment or dates of service not addressed in this order.

This is a final decision of an administrative agency. A person aggrieved by this order may seek judicial review in a manner provided under Chapter 6 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.301 to 24.306. MCL 500.244(1); R 500.65(7). A copy of a petition for judicial review should be sent to the Department of Insurance and Financial Services, Office of Research, Rules, and Appeals, Post Office Box 30220, Lansing, MI 48909-7720.

Anita G. Fox
Director
For the Director:

X Sarah Wohlford

Sarah Wohlford
Special Deputy Director
Signed by: Sarah Wohlford